

Article 2: Required Steps in Processing

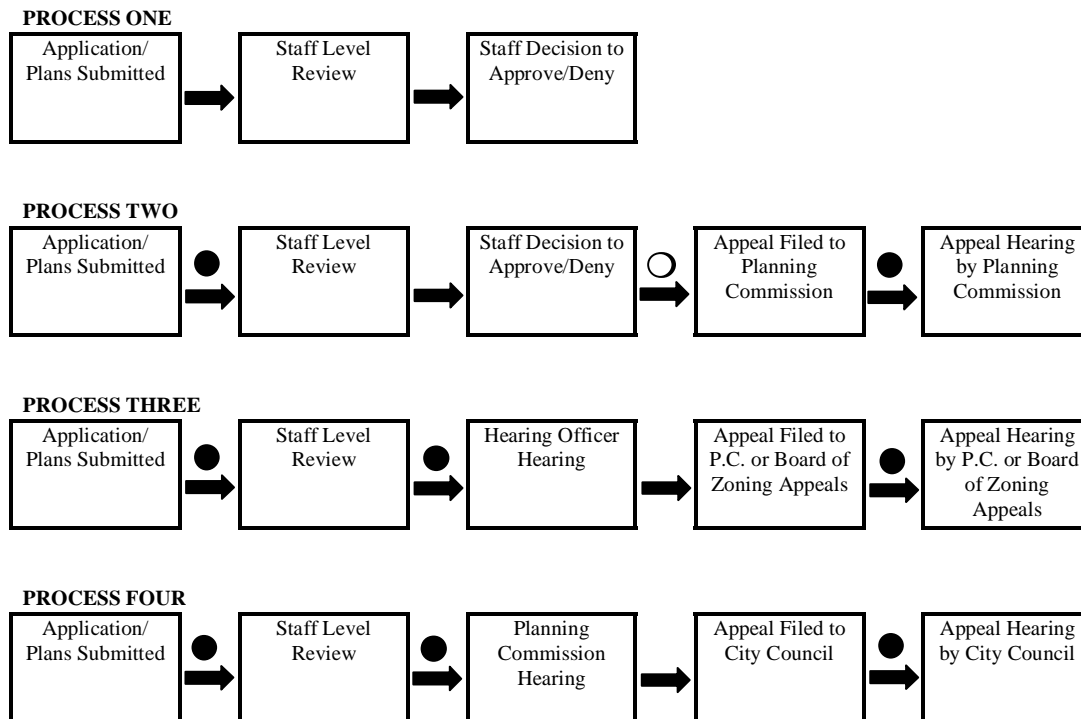
Division 5: Decision Process

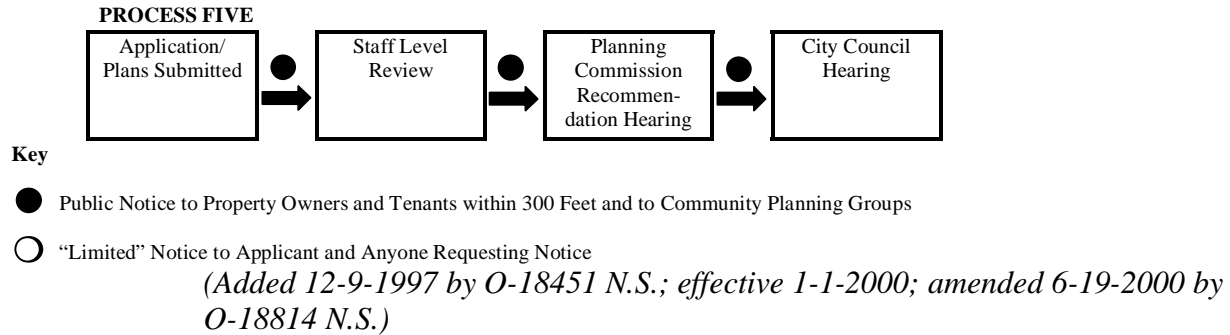
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§ 112.0501 Overview of Decision Process

Applications for permits, maps, or other matters shall be acted upon in accordance with one of the five decision processes established in this division and depicted on Diagram 112-05A. The subject matter of the *development* application determines the process that shall be followed for each application. The provisions of Chapter 12 that pertain to each permit, map, or other matter describe the decision process in more detail. Diagram 112-05A is provided for convenience of reference only and does not define, describe, or limit the scope, meaning, or intent of any provision of the Land Development Code. This diagram describes the City of San Diego's processes only and does not describe other decision processes that may be required by other agencies, such as the State Coastal Commission.

Diagram 112-05A
Decision Processes with Notices





§112.0502 Process One

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0503 Process Two

An application for a permit or other matter acted upon in accordance with Process Two may be initially approved, conditionally approved, or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held. An appeal hearing is available upon written request in accordance with Section 112.0504. A Process Two decision shall be made in the following manner.

- (a) Notice. The designated staff person shall mail a Notice of Future Decision to the persons identified in Section 112.0302(b). Persons who wish to receive notice of the approval or denial of the application may request this information from the staff person. The request must be received no later than 10 *business days* after the date on which the Notice of Future Decision is mailed.
- (b) Decision Process. The designated staff person may approve, conditionally approve, or deny the application without a public hearing. The decision shall be made no less than 11 *business days* after the date on which the Notice of Future Decision is mailed to allow for sufficient time for public comment.

This 11 *business days* minimum time frame for a staff decision will be extended by a period not to exceed an additional 20 *business days* to allow time for a recommendation by a recognized community planning group, if requested by the group's chair, or the chair's designee. Notification of the decision shall be given to the *applicant* and to those persons who request notification in accordance with this section, no later than 2 *business days* after the *decision date*.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

§112.0504 Process Two Appeal Hearing

The Planning Commission shall hear appeals of Process Two decisions subject to the following.

- (a) Persons Who Can Appeal. The following persons may request an appeal hearing after the designated staff person's decision:
 - (1) An *applicant*; or
 - (2) Any other person who files an application for a Process Two appeal hearing in accordance with Section 112.0504(b).
- (b) Request for a Process Two Appeal Hearing. A Process Two decision may be appealed by filing an application for a Process Two appeal hearing with the City Manager no later than 12 *business days* after the *decision date*.
- (c) Scheduling an Appeal Hearing. The City Manager shall assign a date for an appeal hearing before the Planning Commission no later than 10 calendar days after the date on which an application for the appeal hearing is filed with the City Manager. The appeal hearing shall generally be held within 60 calendar days following the filing of the application for the hearing. The appeal hearing shall be noticed in accordance with Section 112.0308.
- (d) Power to Act on the Decision at Appeal Hearing. At the conclusion of the appeal hearing, the Planning Commission may affirm, reverse, or modify the staff decision.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0505 Process Three

An application for a permit, map, or other matter acted upon in accordance with Process Three may be approved, conditionally approved, or denied by a Hearing Officer in the following manner.

- (a) Notice. The City Manager shall mail a Notice of Application to the persons described in Section 112.0302(b) no later than 10 *business days* after the date on which an application for a permit, map, or other matter is *deemed complete*.
- (b) Decision Process. The Hearing Officer may approve, conditionally approve, or deny the application at a public hearing noticed in accordance with Section 112.0301(c), 112.0302, and 112.0303.
- (c) Waiver of Appeal Period. Before the close of the public hearing, an *applicant* may request that the appeal period be waived. The Hearing Officer shall grant the request only after determining for the record that there are no *interested persons* and that the *applicant* has waived all rights to appeal.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0506 Process Three Appeals

The Hearing Officer's decision may be appealed to the Board of Zoning Appeals or the Planning Commission, as specified in Chapter 12, Article 6 for the type of *development* and review required. An appeal from a Hearing Officer's decision that involves applications consolidated in accordance with Section 112.0103 shall be heard by the Planning Commission. An appeal from a Process Three decision shall be made in the following manner.

- (a) Persons Who Can Appeal. A Process Three decision may be appealed by the following persons:
 - (1) An *applicant*; or
 - (2) An *interested person*.
- (b) Time for Filing an Appeal. A Process Three decision may be appealed by filing an application with the City Manager no later than 10 *business days* after the date of the Hearing Officer's decision.
- (c) Grounds for Appeal. A Process Three decision may be appealed on any of the following grounds:
 - (1) Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate;

- (2) New Information. New information is available to the *applicant* or the *interested person* that was not available through that person's reasonable efforts or due diligence at the time of the decision; or
 - (3) *Findings* Not Supported. The decision maker's stated *findings* to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker; or
 - (4) Conflicts. The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a *land use plan*, a City Council policy, or the Municipal Code.
- (d) Scheduling the Appeal Hearing. The appeal hearing before the Board of Zoning Appeals or the Planning Commission shall be held, or the City Manager shall set a date for the appeal hearing, no later than 30 calendar days after the date on which the application for an appeal is filed. The appeal hearing shall be noticed in accordance with Section 112.0308.
- (e) Power to Act on Appeal. After the conclusion of the public hearing, the Planning Commission or Board of Zoning Appeals may affirm, reverse, or modify the decision being appealed.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0507 Process Four

An application for a permit, map, or other matter acted upon in accordance with Process Four may be approved, conditionally approved, or denied by the Planning Commission in the following manner.

- (a) Notice. The City Manager shall mail a Notice of Application to the persons described in Section 112.0302(b) no later than 10 *business days* after the date on which an application for a permit, map, or other matter is *deemed complete*.
- (b) Decision Process. The Planning Commission may approve, conditionally approve, or deny the application at a public hearing noticed in accordance with Sections 112.0301(c), 112.0302, and 112.0303.
- (c) Waiver of Appeal Period. Before the close of the public hearing, an *applicant* may request that the appeal period be waived. The Planning Commission shall grant the request only after determining for the record that there are no *interested persons* and that the *applicant* has waived all rights to appeal.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000; amended 6-19-2000 by O-18814 N.S.)

§112.0508 Process Four Appeals

The Planning Commission's decision may be appealed to the City Council in the following manner.

- (a) **Persons Who Can Appeal.** A Process Four decision may be appealed to the City Council by the following persons:
 - (1) *An applicant*; or
 - (2) *An interested person.*
- (b) **Time for Filing an Appeal.** A Process Four decision may be appealed by filing an application with the City Clerk's office no later than 10 *business days* after the date of the Planning Commission's decision.
- (c) **Grounds for Appeal.** A Process Four decision may be appealed on any of the following grounds:
 - (1) **Factual Error.** The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate;
 - (2) **New Information.** New information is available to the *applicant* or the *interested person* that was not available through that person's reasonable efforts or due diligence at the time of the decision;
 - (3) **Findings Not Supported.** The decision maker's stated *findings* to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker;
 - (4) **Conflicts.** The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a *land use plan*, a City Council policy, or the Municipal Code; or
 - (5) **Citywide Significance.** The matter being appealed is of citywide significance.
- (d) **Scheduling Appeal Hearings.** The appeal hearing before the City Council shall be held, or the City Clerk shall set a date for the appeal hearing, no later than 30 calendar days after the date on which the application for an appeal is filed. The appeal hearing shall be noticed in accordance with Section 112.0308.

- (e) Power to Act on Appeal. After the conclusion of the public hearing, the City Council may affirm, reverse, or modify the decision being appealed.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0509 Process Five

A Process Five decision on a permit, map, or other matter shall be made by the City Council in the following manner.

- (a) Notice. The City Manager shall mail a Notice of Application to the persons described in Section 112.0302(b) no later than 10 *business days* after the date on which an application for a permit, map, or other matter is *deemed complete*.
- (b) Planning Commission Recommendation. Before the City Council decision, the Planning Commission shall hold a public hearing to consider the application. The hearing shall be noticed in accordance with Sections 112.0301(c), 112.0302, and 112.0303. The hearing may be continued if desired by the Commission to solicit and obtain information needed to make a recommendation. However, the hearing shall be concluded no later than 60 calendar days after the initial hearing date. At the conclusion of the public hearing, the Planning Commission shall make a written recommendation to the City Council to approve, conditionally approve, or deny the application. If the Planning Commission fails to act within this 60-day period the matter shall proceed to City Council without a recommendation.
- (c) Decision Process. After receiving the Planning Commission's recommendation or expiration of the 60-day time period with no recommendation, the City Council shall hold a public hearing to consider the application. The hearing shall be noticed in accordance with Sections 112.0301(c), 112.0302, and 112.0303. The City Council may approve, conditionally approve, or deny the application at the conclusion of the hearing.
- (d) Exception to Process Five. The City Council may waive the requirement of Section 112.0509(b) that the Planning Commission make a recommendation before a decision by the City Council when the City Council determines that action is required by a provision of the Municipal Code or is required to facilitate timely action by the City on a matter in accordance with state law.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0510 Contents of Appeal Applications

- (a) An application for an appeal of a Process Two decision shall include the following information:
 - (1) The name, address, and telephone number of the person filing the appeal;
 - (2) The name of the *applicant*;
 - (3) The decision being appealed and the date of the decision;
 - (4) The grounds for the appeal; and
 - (5) Any information or exhibits supporting the appeal that are available at the time the appeal is filed.
- (b) An application for an appeal of a Process Three or Process Four decision shall include the information required in Section 112.0510(a) and information that establishes the basis on which the appellant is an *interested person*.
- (c) An application for an appeal of an *environmental determination* shall include the following information:
 - (1) The name, address, and telephone number of the person filing the appeal;
 - (2) The name of the *applicant*; and
 - (3) The specific grounds, clearly identified, upon which the appellant claims the lower decision maker's *environmental determination* was made in error. All grounds must be specified in the appeal. Any grounds not stated in the appeal will not be considered.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 7-26-2004 by O-19303 N.S.)

§112.0511 No Development During Appeal Period

Development authorized by a permit, map, or other matter may not occur before the *date of final action*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§ 112.0520 Environmental Determination Appeals

(a) Persons Who Can Appeal

- (1) Notwithstanding other provisions of this Code, any person may appeal an *environmental determination* by the City Manager.
- (2) Notwithstanding other provisions of this Code, any *interested person* may appeal to the City Council, a decision by the Planning Commission, to approve a negative declaration, mitigated negative declaration or an environmental impact report, provided that:
 - (A) The decision is associated with a Process Two or Three decision.
 - (B) All available administrative appeals of the project decision have been exhausted.

(b) Time for Filing an Appeal

- (1) An application to appeal a decision described in section 112.0520(a)(1) shall be filed in the Office of the City Clerk within the earlier of 10 *business days* from the date of the posting of the Notice of Right to Appeal Environmental Determination or 15 *business days* from the date of the *environmental determination*.
 - (2) An application to appeal a decision described in section 112.0520(a)(2) shall be filed in the Office of the City Clerk within 10 *business days* from the date of the Planning Commission's decision.
- (c) The appeal hearing before the City Council shall be held, or the City Clerk shall set a date for the appeal hearing, no later than 30 calendar days after the date on which the application for an appeal is filed. The appeal hearing shall be noticed in accordance with section 112.0308.
- (d) The City Council shall consider the appeal and shall, by a majority vote:
- (1) Deny the appeal, uphold the *environmental determination* and adopt the CEQA findings of the previous decision-maker, where appropriate; or
 - (2) Grant the appeal and make a superceding *environmental determination* or CEQA findings; or

- (3) Grant the appeal, set aside the *environmental determination*, and remand the matter to the previous decision-maker, in accordance with section 112.0520(f), to reconsider the *environmental determination* that incorporates any direction or instruction the City Council deems appropriate.
- (e) If the City Council denies the appeal or grants the appeal under section 112.0520(d)(2), the lower decision-maker's decision to grant the entitlements, approval or City authorization, shall become effective immediately.
- (f) If the City Council grants the appeal under section 112.0520(d)(3), the lower decision-maker's decision to grant the entitlements, approval or City authorization shall be deemed vacated and the lower decision maker shall reconsider its *environmental determination* and its decision to grant the entitlements, approval or City authorization, in view of the action and, where appropriate, any direction or instruction from the City Council.
 - (1) If the *environmental determination* was a decision that the activity was not subject to CEQA, the matter shall be remanded to the Development Services Director to prepare a revised *environmental determination* in accordance with section 128.0103.
 - (2) If the *environmental determination* was the certification of an environmental impact report or adoption of a negative declaration or mitigated negative declaration, associated with a Process Two or Three decision, the matter shall be remanded to the Planning Commission for consideration of a revised *environmental determination*.
 - (3) If the *environmental determination* was the certification of an environmental impact report, or adoption of a negative declaration or mitigated negative declaration, associated with a decision by the City Manager, the matter shall be remanded to the City Manager for consideration.
- (g) If the decision on remand, in accordance with section 112.0520(d)(3), results in the same type of environmental document, such decision shall be deemed the final action.

(Added 7-26-2004 by O-19303 N.S.)